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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 2006-0084
)
Instituting a Proceeding Under)
Hawaii's Net Energy Metering)
Law, Hawaii Revised Statutes)
§§ 269-101 - 269-111, to)
Investigate Increasing: (1) the)
Maximum Capacity of Eligible)
Customer-Generators to More Than)
Fifty Kilowatts; and (2) the)
Total Rated Generating Capacity)
Produced by Eligible Customer-)
Generators to an Amount Above)
0.5 Percent of Peak Demand)
_____)

ORDER NO. 22535

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed June 15, 2006
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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ORDER

By this Order, the commission grants the Motion to Intervene filed by Hawaii Renewable Energy Alliance ("HREA") on April 19, 2006 ("HREA's Motion"), and the Motion to Intervene and Become a Party filed by Hawaii Solar Energy Association ("HSEA") on April 27, 2006 ("HSEA's Motion"). The commission also grants the Motion for Participation Without Intervention filed by Zero Emissions Leasing LLC ("Zero Emissions") on May 1, 2006 ("Zero Emissions' Motion"), subject to certain conditions, as set forth in this Order.

I.

Background

By Order No. 22380, filed on April 10, 2006 ("Order No. 22380"), the commission initiated this investigation

to determine whether, and to what extent, the commission should increase: (1) the maximum capacity of eligible customer-generators to more than fifty (50) kilowatts ("kW"); and (2) the total rated generating capacity produced by eligible customer-generators to an amount above 0.5 percent of an electric utility's system peak demand, under Hawaii's Net Energy Metering Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-101 to 269-111 ("Net Energy Metering Law").

As set forth in Order No. 22380, on February 2, 2006, the commission held an informal meeting to discuss, among other topics, whether the commission should increase the above-described maximum capacities under the Net Energy Metering Law. Hawaii's regulated electric utilities -- Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Limited ("MECO"), and Kauai Island Utility Cooperative ("KIUC") -- as well as numerous other energy-related companies and organizations, and the State of Hawaii Department of Business, Economic Development, and Tourism were represented at the meeting.

As all regulated electric utilities in Hawaii will likely be impacted by the outcome of this investigation, the commission made HECO, HELCO, MECO, KIUC, and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy

("Consumer Advocate") parties to this docket.¹ Because, however, the commission was uncertain as to the interests of the remaining energy-related companies and entities who attended the commission's February 2, 2006 informal meeting, and their willingness to participate in this proceeding, the commission served them with copies of Order No. 22380 and allowed them to file motions to intervene or participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4 within twenty days of the date of Order No. 22380, or by May 1, 2006.

In response to Order No. 22380, HREA and HSEA timely filed motions to intervene on April 19, 2006 and April 27, 2006, respectively. In addition, Zero Emissions timely filed a motion to participate without intervention on May 1, 2006.² As discussed below, the commission hereby grants HREA's Motion and HSEA's Motion; it also grants Zero Emissions' Motion, subject to certain conditions set forth below.

¹The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an *ex officio* party to any proceeding before the commission. See HRS § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

²No oppositions were filed in response to HREA's Motion, HSEA's Motion, and Zero Emissions' Motion.

II.

Discussion

A.

Intervention and Participation

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;

- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(b) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."³

In addition, HAR § 6-61-56 sets forth the requirements for participation without intervention in commission proceedings. Similar to the requirements for intervention in HAR § 6-61-55, HAR § 6-61-56 provides in relevant part:

- (a) A person who has a limited interest in a proceeding may make an application to participate without intervention by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57.
- (b) The motion shall provide:
 - (1) A clear and concise statement of the direct and substantial interest of the applicant;
 - (2) The applicant's position regarding the matter in controversy;
 - (3) The extent to which the participation will not broaden the issues or delay the proceeding;

³See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a).

B.

HREA's Motion

In HREA's Motion, HREA states that it "is a Hawaii-based, private, non-profit corporation, exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986, composed of developers, manufacturers, distributors, scientists, engineers, and advocates

in renewable energy."⁴ HREA lists several dockets in which it (or its individual members) were intervenors, including Docket No. 94-0226 (Renewable Energy) and Docket No. 96-0493 (Electric Competition, Including an Investigation of the Electric Utility Infrastructure in the State of Hawaii). Currently, HREA is an intervenor in the following open dockets before the commission: Docket No. 03-371 (Distributed Generation), Docket No. 03-372 (Competitive Bidding for New Generation), and Docket No. 05-0069 (Demand-Side Management/Energy Efficiency).

Overall, HREA asserts that it "has a substantial and continuing interest in the subject of renewable energy in the electric utility sector."⁵ Specifically regarding this docket, HREA states that its interests extend directly to the application of small wind, photovoltaic ("PV"), micro hydro, and biomass systems under the current Net Energy Metering Law.

Based upon the foregoing, the commission finds that HREA has a substantial interest that is reasonably pertinent to the matters of this docket, and that its participation in this proceeding may assist in the development of a sound record. Accordingly, the commission concludes that HREA's Motion should be granted.

⁴HREA's Motion, at 2.

⁵HREA's Motion, at 3.

C.

HSEA's Motion

HSEA, a non-profit professional trade association, states that its "organizational purposes are to promote the utilization and commercialization of renewable energy resources in the State of Hawaii, to advance consumer education and understanding of solar energy technologies, and to develop sound trade and technical practices among its member companies."⁶ Like HREA, HSEA has participated as a party, and continues to participate, in several dockets before the commission.⁷ According to HSEA, it represents the majority of manufacturers, suppliers, and licensed solar contractors who are active in the State, and very likely will represent the manufacturers, suppliers, and contractors who design, supply, and install net-metered PV systems. HSEA therefore asserts that "HSEA and its members have a strong and vested interest in the development and implementation of the rules and regulations that determine the scope of the State of Hawaii's net energy metering law."⁸

Based on the foregoing, as with HREA, the commission finds that HSEA has a substantial interest that is reasonably pertinent to the matters of this docket, and that its participation in this proceeding may assist in the development of

⁶HSEA's Motion, at 2.

⁷For example, HSEA states that it has been a party to the HECO demand-side management programs docket (Docket No. 00-0209) and the commission's energy efficiency docket (Docket No. 05-0069).

⁸HSEA's Motion, at 4.

a sound record. Accordingly, the commission concludes that HSEA's Motion should be granted.

Nonetheless, both HSEA and HREA are cautioned that their participation as intervenors in this docket will be limited to the issues raised in this docket. The commission will preclude any effort by HSEA or HREA to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider either party's participation in this docket if, at any time, during the course of this proceeding, the commission determines that HSEA or HREA are unreasonably broadening the pertinent issues raised in this docket or are unduly delaying the proceeding.

D.

Zero Emissions' Motion

In support of Zero Emissions' Motion, Zero Emissions represents that it is a developer of large-scale (i.e., more than 100 kW) grid-connected PV power generation systems in Hawaii that are potentially eligible for net metering, depending on the outcome of this proceeding. As a developer of such systems, Zero Emissions states that it possesses expertise, knowledge and experience to offer fact-based opinions and conclusions about the technological and economic advisability of increasing the maximum capacity of eligible customer-generators to more than fifty kilowatts, and increasing the total rated generating capacity produced by eligible customer-generators to an amount above

0.5 percent of peak demand. Zero Emissions requests to participate without intervention in this docket to the fullest extent permitted by the commission, consistent with the representations made in Zero Emissions' Motion. Zero Emissions further avers that its participation will not broaden the issues or delay the proceeding.

Based upon the foregoing, the commission finds that Zero Emissions, as a developer of large-scale PV power generation systems, may be able to provide relevant information relating to the availability and functioning capabilities of such systems. Accordingly, the commission grants Zero Emissions participation without intervention in this proceeding. However, the commission limits Zero Emissions' participation to filing a Statement of Position, unless Zero Emissions requests further involvement, and such request is approved by the commission, at a future juncture. Zero Emissions is further cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider Zero Emissions' participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

III.

Orders

THE COMMISSION ORDERS:

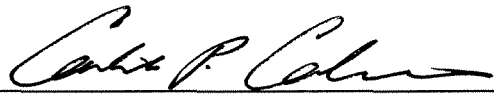
1. HREA's Motion is granted.

2. HSEA's Motion is granted.


3. Zero Emissions' Motion is granted, subject to the condition that Zero Emissions' participation is limited to the filing of a Statement of Position.

DONE at Honolulu, Hawaii JUN 15 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kaiulani E.S. Kidani
Commission Counsel

2006-0084.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22535 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JUN 15 2006